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H.C.P(MD)No.440 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2019

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

H.C.P (MD)No.440 of 2019

Selvakumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus to call for the entire records connected with the detention order passed in M.H.S.Confdl.No.35/2019, dated 13.05.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Selvakumar, aged about 25 years, son of Mariappan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Murugesan

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

* * * * *

ORDER

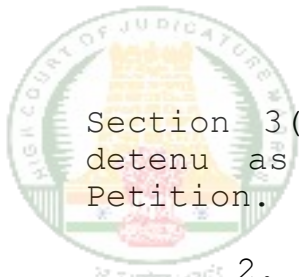
S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The petitioner is the detenu, who, vide impugned detention order dated 13.05.2019, passed by the second respondent by invoking

<https://hcservices.courts.gov.in/hcservices/>



Section 3(2) of the Tamil Nadu Act 14 of 1982, in branding the detenu as 'Goonda', came forward to file this Habeas Corpus Petition.

2. The Sponsoring Authority has recommended for the detention of the Petitioner, under the Tamil Nadu Act 14 of 1982, on the one adverse case and ground case, registered against the petitioner and the petitioner was thereafter arrested in the ground case. The detaining authority has branded the detenu as a Goonda and has passed the detention order, dated 13.05.2019.

3. The learned Counsel appearing for the petitioner submitted that there is one adverse case and a ground case and insofar as the adverse case is concerned, the detenu had already been granted bail. The learned Counsel further contended that the arrest of the detenu in the ground case was not intimated to the near relatives and the same is mandatory, under the Code of Criminal Procedure and therefore, the detention order itself is bad.

4. The learned Counsel for the petitioner brought to our notice the arrest Memo at page 149 wherein, it is stated that the arrest has been intimated through SMS to a Mobile No.90252 46340. The learned Counsel, by bringing to our notice this fact submitted that there is no material whatsoever to prove that this mobile number either belongs to mother or any other relative and there is no delivery report that was made available to the detaining authority. Therefore, the valuable right guaranteed, as to the intimation of the arrest, has been denied and the consequent detention order itself stands vitiated.

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

6. The issue that has been raised by the learned counsel for the petitioner is covered by the earlier judgment of this Court in ***Rabiya Vs. The Secretary to Government, Home Prohibition and Excise Department, Chennai, in H.C.P.No.2905 of 2018, dated 16.04.2019.*** The relevant portion in the judgment is extracted hereunder:

"4. The learned counsel appearing on behalf of the detenu has drawn the attention of this Court to Page no.136 of the booklet and would submit that the arrest intimation in connection with the ground case was sent through SMS through Mobile No.8124074054 and there is no material whatsoever has been produced that the said mobile phone belongs to either the mother or relative of the detenu and there is no delivery report has also been available. In the absence of the same, valuable right guaranteed to the detenu as to the intimation of his arrest, steps be taken by the detenu



to get him out has been denied and hence, prays for appropriate orders.

7. As rightly pointed out by the learned counsel appearing for the petitioner that though in Page No.136 of the booklet, arrest intimation related to the ground case said to have been sent through mobile phone, it is not clear that the message has been delivered to the concerned address and it is not clear whether the concerned addressee is his relative or his friend. In the absence of vital information, it cannot be said that the arrest intimation has been given to the concerned relative or friend and in the absence of such material, valuable right guaranteed to the detenu as to the further steps taken to get him out in the said case has been vitiated and hence on the sole ground, the impugned order warrants interference."

7. The facts of the present case is also squarely covered by the above judgment. In the present case, the arrest intimation relating to the ground case has been sent to a particular mobile phone number and it is not clear as to whom this mobile number belongs and it is also not clear as to whether the message was delivered to the concerned person. Therefore, the intimation after the arrest of the detenu has not been properly made by the police and the same makes the arrest illegal and consequently, vitiates the detention order. Therefore, this Court has to necessarily interfere with the detention order passed by the second respondent.

8. In the result, this Habeas Corpus Petition is allowed by setting aside the order of detention passed by the second respondent in M.H.S.Confdl.No.35/2019, dated 13.05.2019. Consequently, the detenu, namely, Selvakumar, son of Mariappan, aged 25 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

Rsb



To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public (Law & Order), Fort st.George,
Chennai -9

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VB(18.11.2019) 4P 6C